Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small	)	
Cell Infrastructure by Improving Wireless	)	WT Docket No. 16-421
Facilities Siting Policies	)	
	)	

REPLY COMMENTS OF ZAYO GROUP, LLC

Zayo Group, LLC ("Zayo") respectfully submits these reply comments ("Comments") regarding the above-captioned proceeding. Zayo agrees with the commenters who support reducing obstacles to deployment of communications infrastructure in the public right of way ("ROW") within municipalities. Therefore, Zayo urges the Federal Communications Commission ("Commission") to adopt a Declaratory Ruling, including the items requested in the Petition filed by Mobilitie, LLC[1], to streamline the process for wireless and wireline broadband infrastructure deployment.

I. Introduction and Summary

Zayo is a competitive provider of communications infrastructure and carrier-neutral colocation services, offering a full suite of connectivity solutions over regional and metropolitan fiber networks to carrier and enterprise customers. Zayo's network spans over 128,000 route miles, serving 371 metro markets in 46 states and the District of Columbia, and connecting to over 25,000 buildings, including approximately 6,900 cell towers. Zayo's website contains additional information regarding its business (www.zayo.com).

[1] Mobilitie, LLC Petition for Declaratory Ruling, Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way (filed Nov. 15, 2016) ("*Mobilitie Petition*").

Zayo is interested in the proposed Declaratory Ruling because Zayo installs broadband infrastructure in the form of wireline fiber networks, distributed antenna systems ("DAS"), and other small cell technologies in many markets throughout the United States. In addition to utilizing existing owned infrastructure, Zayo commits significant capital annually to build new fiber infrastructure to meet customers' needs, providing customers with flexible, customized solutions for increasing broadband services to meet ever-growing end user demand. However, municipal ROW barriers cause delays and burdensome costs in deploying broadband infrastructure, no matter the technology.

Securing local authorization to obtain ROW access often includes months, and in some cases years, of project review, agreement negotiation, and construction permitting. The most extreme variable, however, is the requirement of a pre-permitting agreement (whether titled franchise agreement, ROW license, or other). It often takes months, or more, for municipal governments to provide an initial draft of an agreement, followed by many more months, or more, of negotiation. Indeed, Zayo has encountered instances where the pre-permitting agreement process takes up to and over two years from initial contact with a municipality. The current process causes delay in and drives up the cost of deploying new network, which disincentivizes industry investment in new broadband infrastructure and acts as a barrier to entry into markets.

On top of the costs and burdens related to initial deployment of wireless and wireline facilities, the ongoing expenses related to maintaining such facilities may negate a business case for network expansion. While a limited number of jurisdictions encourage deployment by requiring minimal recurring compensation, or even none at all, the vast majority of local governments treat such projects as a long term revenue center to bolster local coffers at the

expense of encouraging broadband deployment. In the wireless context, compensation is imposed in the form of high per-site attachment fees, including multiple thousands of dollars per site per year. Other municipalities have sought to extract additional in-kind compensation such as multiple strands of fiber for city use. In certain instances, the imposed fees are so high that industry participants have tabled deployment projects altogether. In other cases, the industry has been forced to resort to regulatory and/or judicial action against the local authority, seeking to have compensation requirements struck down. In addition to their cost and resource drain, adjudications offer little practical relief for specific deployments given the length of time they take to resolve. Adjudications also do little to foster cooperation between the industry and local authorities. Further, even where a business case is not rejected due to onerous fees, recurring costs are passed along through the supply chain and are borne ultimately by end users. Accordingly, ongoing local government fees stifle the deployment of infrastructure, drive up costs, and leave consumers without adequate access to affordable broadband service.

Therefore, Zayo submits these Comments in support of the Commission taking appropriate measures to enforce Section 253 of the 1996 Telecom Act[2] and issuing a Declaratory Ruling, as proposed by many of the commenters in this docket, promoting the deployment of broadband infrastructure. Such a Declaratory Ruling would further the Commission's substantial progress thus far in streamlining an improved infrastructure deployment process.

Zayo's support derives from the current state of broadband demand as outlined in Section II. In Section III, Zayo explains why clear, nondiscriminatory, and reasonable rules will incentivize increased investment in new broadband infrastructure. In Section IV, Zayo urges the

[2] 47 U.S. Code §253.

Commission to act now. Section V concludes.

II. Demand for both wireless and wireline broadband deployment is high and on the rise

Some municipal government comments state that a case has not yet been made that increased broadband demand requiring additional deployment of infrastructure exists today; instead, they argue that this is an issue for the future. These claims are not correct. While it is true that the peak of broadband demand is likely still in the future, the commenters miss that the issue is upon us now. Explosive growth of technology in the last decade has placed a tremendous burden on wireless and wireline networks and supply is not keeping up with demand.

In its *2014 Infrastructure Report and Order*[3], the Commission found that in the second half of 2013, 41 percent of American homes had only wireless telephones and more than half of adults in poverty lived in wireless-only households.[4] Moreover, the Commission predicted that "the volume of data crossing North American mobile networks would grow almost eight-fold between 2013 and 2018."[5]

This demand for wireless and wireline infrastructure is not surprising given that communities, schools, and businesses increasingly require advanced broadband infrastructure in order to keep up in today's technologically-driven world. A list of just a few of the constituencies that depend on advanced broadband infrastructure include: public safety and first response teams ensuring public safety; businesses seeking greater efficiency and reach to meet the challenges of growth in technology-driven environments; consumers making purchases, conducting financial

[3] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014); *Erratum*, 30 FCC Rcd 31 (2015) ("*2014 Infrastructure Report and Order*"), *aff'd Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).
[4] *Id.* at para. 6.
[5] *Id.* at para. 7.

transactions, and accessing social and entertainment outlets on devices in and away from the home; hospitals and educational institutions connecting campuses to share data; and students preparing to enter the workforce in a connected world. This boom in broadband usage places a great burden on existing networks, and those networks have become materially constrained.

To meet current and rapidly developing demand, the wireless industry has made and plans to continue making massive investments in broadband infrastructure, such as increasing the bandwidth capacity of existing cellular macro towers and deploying small cell equipment. Small cell technology allows wireless carriers to increase the reach and bandwidth capacity of their wireless networks both at targeted high-density coverage areas that periodically experience sharp increases in consumer usage (such as sports stadiums and shopping malls) and in areas that may not have sufficient wireless coverage through macro-towers. Small cell technology offers these coverage and capacity benefits without the costs and aesthetic impact of constructing additional macro-towers. Importantly, to meet this increase in demand for wireless bandwidth, massive investments are being made in the wireline infrastructure networks that connect the wireless technologies (e.g., fiber-to-the-tower services).

Zayo is seeing increased nationwide demand for broadband infrastructure deployment across its customer base, but local regulatory hurdles to broadband deployment projects increase the cost, elongate the deployment cycle, and otherwise stifle investment in broadband deployment.

III. Clear, reasonable, and nondiscriminatory rules are necessary for competitive providers like Zayo to invest in broadband infrastructure deployment

Municipal government commenters, industry commenters, and the Commission all agree that broadband deployment is important, but municipal governments oppose the Commission

issuing rules promoting broadband deployment. They maintain that decision-making should be left to municipal government personnel, who are closer to the citizens and better understand specific community needs. Zayo recognizes the legitimate interest of municipal governments to maintain the public ROW and protect the aesthetic character of their communities through reasonable policies. However, many municipalities fail to balance these interests with rights granted to public utilities and the market demand for advanced broadband infrastructure. Further, the Commission's proposed rules do not strip municipal governments of these roles; instead, the rules improve the process and transparency of review and granting access to the municipal ROW.

A. Rules must be clear to give providers certainty when considering investing in the deployment of broadband infrastructure

Any utility provider, but especially competitive providers like Zayo, must examine the costs of deployment when considering a network expansion. Accordingly, for every broadband deployment project, Zayo must build a business case to determine whether to enter into or expand further within a given market. Key in this consideration is the cost of installing and maintaining the new network. Uncertainty about the time it will take and the cost of building and maintaining the network will lessen the incentive to invest in infrastructure, resulting in less deployment and less benefit to consumers.

Clear rules that municipal governments follow to review applications, grant permits, and charge for ROW access, will promote investment. If Zayo is able to rely on a definite time and definitive cost for a proposed network expansion, Zayo can reasonably commit investment to that project. On the contrary, if application review, permitting timing, and costs are unknown, investment in deployment will be stifled. The ability to install and maintain facilities on a transparent and cost effective basis enables and provides incentives for more and faster

deployment, especially for competitive providers like Zayo.

B. Rules must be technologically neutral, for an effective approach to improved deployment

As discussed in Section II of this Comment, all broadband technologies are integral to increasing broadband deployment. Thus, Zayo agrees with the comments filed by Conterra Broadband Services and Uniti Fiber[6] that urge the Commission to adopt the Declaratory Ruling requested in the *Mobilitie Petition* but also ask the Commission to go beyond the *Mobilitie Petition* and broaden the scope of the Declaratory Ruling to "remove local impediments to the deployment of both fiber and wireless infrastructure."[7]

Preferential regulatory treatment of one technology over others causes market distortions. One example is the history of pole attachment fees related to aerially installed networks. For many years, attachments by telecommunications providers and cable providers were treated differently under the regulatory frameworks of the Commission and many state regulations. The decades of disparate treatment lead to much slower deployment of new networks by the telecommunications providers as the relatively high cost of maintaining such networks acted as a financial disincentive, thus creating a barrier to entry into the market. In its 2011 order, the Commission acknowledged its mandate to encourage the deployment of these services to all Americans.[8] The Commission noted that "the record here demonstrates that pole rental rates play a significant role in the deployment and availability" of broadband

[6] Comments of Conterra Broadband Services and Uniti Fiber in Response to Public Notice, WT Docket No. 16-421, WC Docket No. 16-143, WC Docket No. 15-247, WC Docket No. 05-25, RM-10593, GN Docket No. 13-5 (filed March 8, 2017).
[7] *Id.* at 4.
[8] *Implementation of Section 224 of the Act: A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011).

infrastructure.[9] In 2015, to solve for the discrepancy, the Commission issued new rules requiring similar fee treatment of cable and telecom network attachments, removing disincentives to the telecommunications industry's investment in such infrastructure to ensure that the public had access to service at affordable prices.[10] This is an instructive example of how preferential treatment of one technology over another can lead to market distortions that work against established public policy goals. Zayo urges the Commission not to go down the inappropriate road of discrimination again, which would result in the undesired outcome of curtailing the important public policy goal of wireline and wireless infrastructure deployment.

Specifically, when considering broadband deployment, it is important for the Commission to consider the real world consequence of discriminating against any technology. For example, when considering wireless infrastructure deployment, all technologies must be treated equally in order for reliable deployment given that a network requires many technologies to work together. With discrimination, providers would be forced to take different procedural steps and encounter time-consuming and costly negotiations with each municipality in which a provider tries to deploy infrastructure. This result is not only illogical, but it would also create a disincentive for providers to deploy new technologies simply because of the unknowns in dealing with municipalities around the country.

These disincentives to invest in new technology will thwart competition within local telecommunications markets and throughout the country. As a result, consumers will end up with services that are at the same time more costly and less adequate to meet current and future

[9] *Id.* at 316.
[10] *See Implementation of Section 224 of the Act: A National Broadband Plan for Our Future,* Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, FCC 15-151 (rel. Nov. 24, 2015).

demand. The goal of broadband deployment, and of the commenters supporting a Declaratory Ruling, is to provide better and more extensive broadband networks to consumers as markets become more congested. Nondiscriminatory practices for ROW consideration will result in incentivizing all types of telecommunications deployment, determined by demand by end users.

In addition to the increase in demand and need for more and diversified broadband infrastructure, it is often the exurban and rural areas that are most often in the most need and at the most risk of being left out of broadband deployment due to the difficulty and expense inherent in executing deployment in remote areas (i.e., the digital divide[11]). By ensuring that all technologies have a clear path and cost to use ROWs to build to these areas, there will be less barriers to deploying to these high-need communities, and many consumers will benefit from not just any, but also fast and efficient growth in advanced broadband services.

C. Rules must be reasonable to promote investment

While rules must allow for municipal governments to protect the interests of their citizens, the public policy mission to increase broadband infrastructure deployment must not be thwarted. Thus, rules must be reasonable to balance these two interests. A Declaratory Ruling must therefore require reasonableness in the consideration of ROW applications and granting of ROW permits.

First, a clearly defined and enforceable set amount of time, or a "shot clock," for municipal governments to consider an application and approve or deny a permit for all broadband technologies is reasonable. As long as there is certainty in the timing for all

[11] *See* Remarks of Ajit Pai, Chairman, Federal Communications Commission, Washington, DC (January 14, 2017) at 2, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

deployment, the exact timing should be determined by the Commission after careful consideration of the input submitted by all parties. For example, if municipal governments need more or less time to consider small cell ROW deployments versus wireline ROW deployments, and if support is provided for this need, different shot clocks for different technologies are reasonable, as long as all technologies are covered specifically or by a catch-all shot clock. Nonetheless, Zayo urges the Commission to consider that the longer the shot clock is for a particular technology, the larger burden and less incentive there will be on deployment of infrastructure of that technology.

Second, if support is provided, it may be reasonable for municipal governments to have specific requirements to promote aesthetic interests in the municipality. However, any such requirements must be supported by evidence explaining why such a requirement is reasonable, and, importantly, such requirements must be available and clearly stated to parties applying for ROW permits at the beginning of the application process. Municipal governments should consider, however, that unduly harsh requirements will stifle investment in deployment. For example, Zayo has previously proposed that the Commission consider modifying the cubic feet limitations for DAS imposed by some municipalities, as maintaining the restrictions place practical engineering restraints on the ability of wireless carriers and their infrastructure partners to bring the most effective and efficient wireless solutions to market and consequently drives up costs and reduces availability of wireless broadband service. Specifically, Zayo explained that the requirement of visible three cubic feet was and would continue to be a technological challenge because such small antennas have reduced range and capacity and therefore require additional cabinet deployments to provide the same coverage as larger cabinets. This type of regulation was not well supported and was identified by the industry as unreasonable.

Finally, fees must be reasonably related to the municipality's cost of maintaining the affected ROW. The cost of deployment is a paramount consideration for industry participants when considering network expansion. Reducing the regulatory burden on deployment inherently reduces build-out costs and enables providers to get services to market more quickly. Both of these factors (cost and time-to-market) are critical drivers of every business case analysis providers make when determining whether to invest resources in specific projects. As the risk/reward balance shifts in favor of the investment, more market participants can enter the market. Competition thereby increases, and ultimately the cost to end users is driven down, making services not only more available but also more affordable. Even in regions where investment incentives remain strong despite high costs, those costs are often passed through to consumers as higher service charges. So more expensive deployment means less options, poorer quality, and increased prices for consumers, through reduced competition and increased pass-through costs. Given the Commission's finding that poorer consumers tend to rely on wireless services,[12] making these services more accessible and affordable to more people is critical to the public interest. Any end user benefits, however, is reliant on deployment, which may be delayed or cancelled due to unreasonable costs.

Zayo recognizes the legitimate interest local municipalities have in recouping the costs of maintaining the public ROW in proportion to the direct impact of telecommunications projects. It is, however, inappropriate for custodians of the public ROW to extort profits above their actual, and proportional, costs. Zayo encourages the Commission to consider rules regulating compensation requirements by limiting ROW fees to a municipality's actual,

[12] *See infra* note 4 and accompanying text.

documented costs of maintaining the public ROW. Zayo notes that permitting fees alone often adequately capture recoupment of ROW management costs.

IV. Commission action is required

Increasing the public's access to broadband services has been a policy priority for the Commission for many years, and Zayo supports taking action now. In its *2011 Pole Attachment Order*[13], the Commission embraced its mandate to encourage deployment of broadband services to all Americans.[14] In its *2014 Infrastructure Report and Order*, the Commission again stated its policy priority to promote the deployment of wireless infrastructure through "eliminating unnecessary reviews, thus reducing the costs and delays" associated with "delivery of more wireless capacity in more locations to consumers through the United States."[15] In the order, the Commission sought to "support surging demand, expand broadband access, support innovation and wireless opportunity, and enhance public safety – all to the benefit of consumers and the communities in which they live."[16] The outcome promulgated by the order incentivized wireless broadband deployment, but the Commission specifically indicated that "broader exclusions for small cell facilities may well be appropriate."[17]

More recently, Chairman Pai has reemphasized the need to "break down barriers to broadband deployment."[18] A Declaratory Ruling that promotes wireless and wireline

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[13] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) ("*2011 Pole Attachment Order"*), *aff'd sub nom. American Elec. Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).
[14] *Id.* at para. 2.
[15] *2014 Infrastructure Report and Order*, at para. 1.
[16] *Id.* at para. 2.
[17] *Id.* at para. 13.
[18] FCC Chairman Ajit Pai Announces Broadband Deployment Advisory Committee Members, Working Groups, and Leadership, FCC News (April 6, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0406/DOC-344285A1.pdf.

infrastructure deployment by removing municipal government impediments, and thus providing more certainty to providers to invest in deployment, would be a significant step forward in advancing the Commission's policy goals. Taking action now will result in consumer benefits through expansion, innovation, and affordability of broadband services.

V. Conclusion

For the foregoing reasons, Zayo adds these Comments to those already submitted regarding the above-mentioned proceeding, supporting a Declaratory Ruling that helps streamline the deployment of wireless and wireline infrastructure.

Respectfully submitted,
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